



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

September 19, 2003

Sheriff Larry Lynch
McLennan County
219 North 6th
Waco, Texas 76701

OR2003-6608

Dear Sheriff Lynch:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 190528.

The McLennan County Sheriff's Office (the "sheriff's office") received a request for all police records of a named individual from September 2002 to the present. You state that you will release the warrant affidavits on the executed warrants to the requestor. You claim, however, that other requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that the submitted information includes two arrest warrants and supporting affidavits. The 78th Legislature recently amended article 15.26 of the Code of Criminal Procedure to add language providing:

The arrest warrant, and any affidavit presented to the magistrate in support of the issuance of the warrant, *is public information*, and beginning immediately when the warrant is executed the magistrate's clerk shall make a copy of the warrant and the affidavit available for public inspection in the clerk's office during normal business hours. A person may request the clerk to provide copies of the warrant and affidavit on payment of the cost of providing the copies.

Act of May 31, 2003, 78th Leg., R.S., ch. 390, § 1, Tex. Sess. Laws Serv. 1631 (to be codified as amendment to Code Crim. Proc. art. 15.26) (emphasis added). The submitted information includes arrest warrants as well as affidavits presented to a magistrate in support of the warrants. This provision makes these documents public. The exceptions found in the Public Information Act do not, as a general rule, apply to information that is made public by

other statutes. *See* Open Records Decision No. 525 (1989) (statutory predecessor). You state that you will release the warrant affidavits, which are the complaints, to the requestor. However, you must also release unredacted copies of the arrest warrants.

We turn now to your arguments concerning the remaining submitted information. Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Pursuant to *United States Department of Justice v. Reporters Committee for Freedom of the Press*, 489 U.S. 749 (1989), where an individual’s criminal history information has been compiled or summarized by a governmental entity, the information takes on a character that implicates the individual’s right of privacy in a manner that the same individual records in an uncompiled state do not. Thus, when a requestor asks for unspecified information concerning a certain named individual and that individual is a possible suspect, arrestee, or defendant, a law enforcement agency must withhold this information under section 552.101 because that individual’s privacy right has been implicated. *See id.* In this instance, we believe that the named individual’s right to privacy has been implicated by the request. Thus, any records in which the named individual is identified as a suspect, arrestee, or offender must be withheld in its entirety under section 552.101 of the Government Code and *Reporters Committee*.

In summary, pursuant to article 15.26 of the Code of Criminal Procedure, the sheriff’s office must release the marked arrest warrants along with the supporting affidavits. The remaining information must be withheld pursuant to section 552.101 of the Government Code in conjunction with common law privacy. As our ruling on this issue is dispositive, we need not address your other arguments.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the

governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Debbie K. Lee
Assistant Attorney General
Open Records Division

DKL/seg

Ref: ID# 190528

Enc. Submitted documents

c: Ms. Kathy Falor
1859 Steinke
Waco, Texas 76705
(w/o enclosures)